Supreme Court, U.S.
FILED
07-510 AUG 8 - 2007
OFFICE OF THE CLERK

No. 07-

IN THE

Supreme Court of the United States

MORGANVILLE ENVIRONMENTAL CORPORATION,

Petitioner,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. What is an equitable time for a Statute of Limitations for a Real Estate mortgage given to a Federal Agency where Congress has Failed to enact such a statute?

2. Where the United States Supreme Court has given Federal Courts the right to set an Equitable Statute of Limitations, and in the absence of Congressional Action, how should an Equitable Statute of Limitations be determined?

3. Where Congress has given State Courts the jurisdiction to handle the foreclosure of mortgages given to Federal Agencies, does the State Court have the same right to set an Equitable Statute of Limitations as a Federal Court handling the same type of Foreclosure?

4. Is a mortgage given to a Federal Agency, a mortgage in perpetuity, in the absence of a Statute of Limitations set by Congress.

LIST OF PARTIES

The parties below are listed in the caption. In addition, Chateau Development Corporation, a New Jersey Corporation; State of New Jersey; CEG Systems, Inc.; Palmieri Engineering Co.; David L. Robertson; John J. Vail; Thomas P. Santry, assignee of Thomas P. Santry, P.A.; General Motors Acceptance Corp.; and Agway, Inc. d/b/a Englishtown Agway, appeared as defendants.

STATEMENT PURSUANT TO RULE 29.6

Petitioner Morganville Environmental Corporation states that it has no Corporate Parents, and that no publicly held company owns 10% or more of Morganville Environmental Corporation's Stock.

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Petitioner respectfully petitions for a writ of certiorari to review the decision of the Superior Court of New Jersey, Appellate Division in this case.

OPINIONS BELOW

The Opinion of the Superior Court of New Jersey, Appellate Division, which affirmed the Opinion of the trial court is unpublished and appended at App. A, 1a. The Letter Opinion of the Superior Court of New Jersey, which granted the USDA's motion for summary judgment, is unpublished and appended at App. C, 7a.

STATEMENT OF JURISDICTION

The Superior Court of New Jersey, Appellate Division entered its Opinion on February 21, 2007. The Supreme Court of New Jersey entered its Order denying certification on May 11, 2007. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257.

STATEMENT OF THE CASE

In 1980, David L. Robertson obtained a mortgage loan from the United States Department of Agriculture. The money was used to purchase land for farming. Robertson stocked the land and started to raise livestock.

He was met with a great deal of opposition by the neighbors and the Township, as well.

A legal battle ensued. By the time it was ended, Robertson was unable to pay his bills and the balance of money due his lawyer. He had in the interim, borrowed additional funds from the USDA and gave it another mortgage to secure these funds in 1982.

We note that the initial mortgage was for the purchase of the property. The mortgage given two years later was for additional monies owing to the USDA. He had no choice but to contract to sell the property, which he did. He took back a mortgage for one year, for almost all of the sales price.

Had the sale gone through, he would have been able to pay the USDA mortgages and his bills that were incurred during the legal battles.

This however, was not to be. The buyer, a builder, had wife troubles and walked away from the transaction. Robertson was left without funds and unable to use the property, which was no longer in his name. He asked the USDA on at least two occasions to foreclose the property. There was sufficient equity, at the time, to pay the USDA mortgages, and the bills that were incurred by Robertson.

Despite the requests of Robertson, and even after two meetings with representatives of the USDA, nothing was done. Robertson had an attorney file a Lis Pendens, preparatory to foreclosure, but was unable to fund the foreclosure, so nothing happened.

More than 20 years went by from the time of the first and second mortgages to the USDA without anything being done. There were several tax sale certificates encumbering the property during the interim, as well. (Neither Robertson, nor the USDA paid any taxes on the property for over twenty years).

Robertson assigned the mortgage given by the builder, which he held, to Plaintiff herein, and a foreclosure suit was instituted before the 20 year statute of limitations applicable to New Jersey Mortgages was reached.

Since the mortgages to the USDA were over 20 years without payment being made thereon, and without advancing any further monies on those mortgages, and void under New Jersey law, if applicable, the USDA was joined in the foreclosure suit, which was instituted in the New Jersey Chancery Court. Upon motion made, the USDA was dismissed from the foreclosure suit. An appeal from this dismissal was taken to the Superior Court of New Jersey, Appellate Division.

The USDA finally woke up after well over 20 years had passed, without any action on its part, paid the accumulated taxes, and started its own foreclosure suit in the New Jersey Chancery Court.

Morganville Environmental Corporation opposed the foreclosure by motion, which was denied. Both foreclosure suits were consolidated into one appeal. The New Jersey Appellate Court denied the relief sought by Morganville Environmental Corporation, as did the New Jersey Supreme Court. It is quite apparent that the New Jersey Courts are unwilling to set their own standards in a case involving a Federal Mortgage.

Morganville Environmental Corporation now seeks Certification to the United States Supreme Court. A decision by this court will resolve a long standing problem.

REASONS FOR ALLOWANCE OF THE WRIT

Congress, though it has enacted a statute of limitations, on notes, secured by mortgages has never enacted an equitable Statute of Limitations on real estate mortgages given by Federal Agencies.

This court has in the past held that where Congress has not enacted legislation setting an equitable statute of limitations, the Federal Court hearing the matter had a right to do so. (*Clearfield Trust v. United States*, 63 S. Ct. 573, 87 L. Ed. 838 (1943)). To our knowledge, however, there are no reported decisions of such being done. The only reported cases have held that a six year *State* Statute of Limitations on mortgages was not an equitable limitation on a mortgage given to a Federal Agency. No equitable limitation on a mortgage has ever been set to our knowledge (in a reported case). Until an equitable Statute of Limitations is set, mortgages given to Government Institutions will be mortgages in perpetuity. As a matter of fact, the attorney for the USDA took that position before the State Courts, in this very case.

Two separate United States Courts of Appeals have questioned the lack of a decision setting forth what an equitable Statute of Limitations should be. (*FHA v. Muirhead*, 42 F.3d 964 and *UMLICVP v. Aretha Matthias, et al.*, 364 F.3d 125). They both expressed concern, that without some guidance, a mortgage given to a Federal Agency would be a mortgage in perpetuity. This of course would create havoc with commercial and non-commercial real estate transactions.

This court has seen fit to set practical statutes of limitation on non real estate mortgages, using State Statutes of Limitation for commercial uniformity. (*United States v. Kimbell Foods*, 440 U.S. 715).

However, other than to give Federal Courts the right to set equitable statutes on mortgages, there has been no definitive opinion on what constitutes an Equitable Statute of Limitations. Nor has there been any decision which holds a State Court to have the same powers as a Federal Court in determining what an equitable statute of limitations should be.

We answer the last statement by suggesting that since Congress has given State Courts the same rights with regard to jurisdiction as Federal Courts have, when mortgage foreclosures are concerned, (28 U.S.C. § 2410) they should have the same right to set up an equitable Statute of Limitations on mortgages to Federal Agencies, which are being foreclosed as does their Federal Counterpart.

The basic question remains. *What is an Equitable Statute of Limitations on a Mortgage, (given to a Federal Agency) when congress has not seen fit to enact one*? Reported decisions have held that a six year statute of limitations, enacted by some States, is not an Equitable one. We have not found a reported decision in which an equitable Statute of Limitations has been adopted.

Unlike some other states, New Jersey has determined that a 20 year Statute of Limitations should apply to real estate mortgages. (Not only between

individuals, but where Governmental Entities are concerned). We suggest that a 20 year statute is most equitable, and should apply to those mortgages where Congress has enacted no statute. Likewise, the State Court, in a foreclosure action, should have the same right as the Federal Courts to establish an Equitable Statute of Limitations.

Barring any action by this court, we will have a situation where mortgages to Federal Agencies will be mortgages in perpetuity. Unless this court takes some action, even a 60 year title search will not be able to insure a good and clear title.

We most respectfully urge this Honorable Court to resolve the problem as to what constitutes an equitable statute of limitations on a real estate mortgage given to a Federal Agency. Two U.S. Courts of Appeal have raised the same question as well.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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